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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

William F. Caton  
Acting Secretary  
Federal Communications Commission  
Room 200, 1919 M Street, NW  
Washington, DC 20554

Re: Written Ex Parte Communication  
In the Matter of Federal-State Joint Board  
on Universal Service, CC Docket No. 96-45

Dear Mr. Caton:

PCIA herewith forwards to the Commission and to the members and staff of the Joint Board a white paper reviewing and expanding upon PCIA's comments in the above-captioned docket concerning the relationship between Sections 254 and 332. We hope this analysis will be useful to you as the Joint Board finalizes its recommendations to the Commission regarding universal service issues.

Should you have any questions regarding the matter, please call me.

Respectfully submitted,

*Robert L. Hoggarth*

Robert L. Hoggarth  
Senior Vice President  
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RH/rg  
Enclosure

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**PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION  
SUPPLEMENTAL ANALYSIS OF THE RELATIONSHIP BETWEEN  
SECTIONS 254 AND 332(c)**

**CC Docket No. 96-45**

In its opening and reply comments in this proceeding, PCIA noted that CMRS providers should be required to contribute, if at all, only to the federal universal service fund, because CMRS is both legally and factually an interstate service. Because CMRS providers do not provide local exchange service for a "substantial portion" of any state's communications, they should not be required to contribute to state universal service funds. In further explanation of its comments and reply comments, PCIA submits this supplemental analysis of the relationship between Sections 254 and 332(c).

The universal service provisions in Section 254, which the Telecommunications Act of 1996 ("1996 Act") added, do not affect the operation of Section 332(c)(3)(A). The 1996 Act in Section 254 created a new universal service framework under which "[e]very telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service." Under this new framework, states may adopt "regulations not inconsistent with the Commission's rules to preserve and advance universal service." The 1996 Act did not, however, amend Section 332(c)(3)(A), the operation of which Congress was fully aware. One conclusion can be drawn from Congress' action: Section 254 is consistent with Section 332(c)(3)(A).

Both Section 254 and Section 332(c)(3)(A) foresee state supplementation of federal universal service programs. Section 254 is general in nature, applies to all types of telecommunications services, and provides the framework for universal service at the federal level. By contrast, Section 332(c)(3)(A) is specific in nature, applies only to CMRS, and specifies when a state may impose universal service requirements on a CMRS provider in that state. Consequently, Section 332(c)(3)(A) acts as a gateway to Section 254 for state universal service requirements imposed on CMRS providers: Before a state may impose universal service requirements on CMRS providers under Section 254, CMRS must be a substitute for landline telephone exchange service for a substantial portion of the communications within that state. Any other interpretation would render Section 332(c)(3)(A) superfluous, which would be directly contrary to Congress' explicit choice not to amend or repeal Section 332(c)(3)(A). Consequently, Section 254 does not affect Section 332(c)(3)(A).

Whether or not a state imposed universal service requirement on CMRS providers satisfies Section 254 is irrelevant unless it also satisfies Section 332(c)(3)(A). Harmony may not be achieved at the expense of ignoring either section, because Congress did not repeal Section 332(c)(3)(A) when it enacted Section 254. Moreover, repeal by implication of explicit statutory mandates are strongly disfavored and not allowed when the two provisions at issue may be interpreted as consistent.<sup>1</sup> Sections

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<sup>1</sup> It is well-established that repeal by implication is disfavored:

[T]he legislature is presumed to envision the whole body of the law when it enacts new legislation. Therefore, the drafters should expressly designate the  
(continued...)

254 and 332(c)(3)(A) do not conflict, and therefore must be harmonized and interpreted as explained above. Consequently, a state may impose universal service requirements on CMRS providers only where such services are a substitute for landline telephone exchange service for a substantial portion of the communications within that state.

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<sup>1</sup>(...continued)

offending provisions rather than leave the repeal to arise by implication from the later enactment.

N. Singer, 1A SUTHERLAND STATUTORY CONSTRUCTION §23.10, at 353 (1993); see *Radzanower v. Touche Ross and Co.*, 426 U.S. 148, 154 (1976).

## CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of October, 1996, I caused copies of the foregoing letter Re: "Written Ex Parte Communication In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45" to be mailed via first-class postage prepaid mail to the following:

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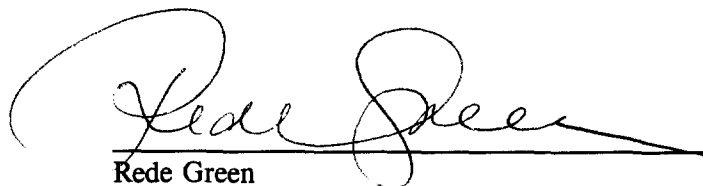
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